

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Edward Billy Bennett,)
)
Plaintiff,) Civil Action No. 8:11-2886-MGL
)
)
-vs-)
)
Lt. Dallas Beckett; Warden Bernard) **Opinion and Order**
Mackie; Dayne Haile; Medical)
Director Yolanda Hernandez; Dr.)
Neville; Nurse Murphy; Sgt C.)
Parker; Commissioner SCDC)
William Byers,)
)
Defendants.)
)

Plaintiff Edward Billy Bennett, proceeding pro se, filed this action pursuant to 42 U.S.C. § 1983. At the time of the underlying events, Plaintiff was an inmate in custody of the South Carolina Department of Corrections (SCDC).

This matter is now before the Court on Defendants' motion for summary judgment which was filed on May 29, 2012. (ECF No. 58.) By order filed on May 29, 2012, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir.1975), Plaintiff was advised of the applicable procedures and the possible consequences if he failed to respond adequately. Plaintiff filed no response to Defendants' motion for summary judgment. (ECF No. 59.) As Plaintiff is proceeding pro se, the Court filed a second Order on July 11, 2012, giving Plaintiff through July 31, 2012 to file his response to the motion for summary judgment. (ECF No. 65.) Plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. Plaintiff once again filed no response to the pending motion for summary judgment.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling. On August 6, 2012, the Magistrate Judge filed a Report and Recommendation in which recommended that the case be dismissed for failure to prosecute pursuant to Fed.R.Civ.P. 41(b). The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The Court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005).

The Court has thoroughly reviewed the record. The Court concurs with the Magistrate Judge's recommendation that the case be dismissed pursuant to Fed.R.Civ.P. 41(b) for failure to prosecute.

IT IS SO ORDERED.

s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
August 29, 2012